

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

ARTURO TORRES OCHOA,

Case No. 3:13-cv-00619-MMD-VPC

Plaintiff,

ORDER

v.

K. SPIERS, et al.,

Defendants.

Plaintiff is a prisoner proceeding *pro se*. Plaintiff has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983. (Dkt. no. 1-1). Plaintiff has not submitted an application to proceed *in forma pauperis*, nor has he paid the filing fee for this action. The Court will not grant plaintiff leave to file an application to proceed *in forma pauperis*, because on at least three (3) occasions, the Court has dismissed civil actions commenced by plaintiff while in detention for failure to state a claim for which relief may be granted.<sup>1</sup> Under 28 U.S.C. § 1915(g), "if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that is frivolous, malicious, or fails to state a claim upon which relief may be granted," he may not proceed *in forma*

---

<sup>1</sup>See *Ochoa v. Cook, et al.*, 3:02-cv-00450-DWH-RAM; *Ochoa v. Willis, et al.*, 3:02-cv-00545-ECR-VPC (both dismissed for failure to state a claim upon which relief may be granted); *Ochoa v. Putter C/O, et al.*, 3:10-cv-00364-HDM-RAM (dismissed as delusional and factually frivolous). The Court takes judicial notice of its prior records in the above matters.

1 *pauperis* and instead must pay the full \$350.00 filing fee in advance, unless he is under  
2 imminent danger of serious physical injury.


3 Plaintiff cannot proceed *in forma pauperis* in this action or any other civil action  
4 filed in any federal court because he has had three (3) or more prior actions dismissed  
5 for failure to state a claim upon which relief may be granted, or as frivolous or malicious.  
6 Plaintiff fails to plausibly allege that he is in imminent danger of serious physical injury.  
7 See *Andrews v. Cervantes*, 493 F.3d 1047, 1055 (9th Cir. 2007) (holding that the  
8 exception to § 1915(g) applies "if the complaint makes a plausible allegation that the  
9 prisoner faced 'imminent danger of serious physical injury' at the time of filing.").  
10 Plaintiff must pre-pay the filing fee in full.

11 It is therefore ordered that this action will be dismissed without prejudice unless  
12 plaintiff pays the \$350.00 filing fee in full within thirty (30) days of entry of this order.

13 It is further ordered that the Clerk of Court shall send plaintiff two (2) copies of  
14 this order. Plaintiff shall make the necessary arrangements to have one (1) copy of this  
15 order attached to the check paying the filing fee.

16 It is further ordered that the Clerk of the Court shall retain the complaint.

17 DATED THIS 14<sup>th</sup> day of November 2013.

18   
19 \_\_\_\_\_  
20 MIRANDA M. DU  
21 UNITED STATES DISTRICT JUDGE  
22  
23  
24  
25  
26  
27  
28